

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 35

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEF MANSER, FRIEDRICH EGGER and
WERNER SEILER

Appeal No. 95-3861
Application No. 08/115,453¹

HEARD: April 9, 1999

Before JOHN D. SMITH, PAK, and KRATZ, Administrative Patent Judges.

PAK, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed September 1, 1993. According to appellants, the application is a continuation of Application No. 07/862,729, filed April 3, 1992, now abandoned; which is a continuation of Application No. 07/381,730, filed July 5, 1989, now U.S. Patent No. 5,126,159, issued June 30, 1992.

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This is a decision on an appeal from the examiner's refusal to allow claims 24 through 32 which are all of the claims pending in the present application.

Claims 24 is representative of the subject matter on appeal and reads as follows:

24. Apparatus for the production of dough with a gluten framework, including the production of paste dough from starch and protein containing raw materials including flour, middling or semolina, comprising:

a) a metering unit for the metering of all liquid and dry components;

b) two-shaft kneading means having two synchronously running and self-cleaning shafts for kneading said dough without the application of molding pressure and for forming the gluten framework in a continuous through process;

c) a single-shaft screw press receiving said dough from said kneading means, including means for homogenizing said dough and applying pressure thereto, in order to press said dough into a desired shape; and

d) means for transferring the dough from said two-shaft kneading means to said single shaft screw press without any pressure build-up in said kneading means and without causing temperature rise of the dough.

The underlined claim phrases are means-plus-function language to which we must apply the statutory provisions of 35

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U.S.C. § 112, paragraph 6.² In other words, we interpret the two shaft kneading means, homogenizing and pressure applying means and transferring means as the corresponding structures described at pages 12-15 of the specification (Figures 1-3) or equivalents thereof. *In re Donaldson*, 16 F.3d 1189, 1197, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994)(**en banc**). "Equivalents thereof" include those structures which differ from the structure described at pages 12-15 of the specification by an insubstantial change which adds nothing of significance. *Valmont Indus. Inc. v. Reinke Mfg. Co. Inc.*, 983 F.2d 1039, 1042, 25 USPQ2d 1451, 1455 (Fed. Cir. 1993).

The references of record relied upon by the examiner are:

Braibanti et al. (Braibanti)	2,026,667	Jan. 7, 1936
Eppenberger	3,457,880	Jul. 29, 1969

The appealed claims stand rejected as follows:

² During the hearing dated April 9, 1999, appellants' representative also agreed that the above underlined claim phrases are means-plus-function language. See also Reply Brief, page 2.

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- (1) Claims 24 through 29 and 32 under 35 U.S.C. § 103 as unpatentable over Eppenberger (Figures 1 and 2);
- (2) Claims 30 and 31 under 35 U.S.C. § 103 as unpatentable over Eppenberger (Figures 1 and 2) in view of Braibanti (Figure 2A).

We reverse each of the foregoing rejections. Although the claimed subject matter is limited to the apparatus illustrated in Figures 1, 2 and 3 and described at pages 12-15 of the specification or "equivalents thereof", the examiner has not explained why such specific apparatus recited in the claims would have been obvious to one of ordinary skill in view of the applied prior art. The examiner has not supplied any evidence or explanation to demonstrate why the employment of the specific structures corresponding to the two shaft kneading means, homogenizing and pressure applying means and transferring means as illustrated in Figures 1, 2 and 3 would have been suggested to one of ordinary skill in the art. The examiner, for instance, has not established that the claimed specific structures are known to have the functions discovered by appellants. Nor has the examiner explained why using the combination of such specific structures would be beneficial to

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the production of dough with gluten framework. The examiner erred in rejecting the claims in question because he simply failed to accord appropriate weight to the claimed means-plus-function phrases consistent with **Donaldson**.

Accordingly, the decision of the examiner is reversed.

REVERSED

JOHN D. SMITH)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHUNG K. PAK)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
PETER F. KRATZ)	
Administrative Patent Judge)	

CKP:lp

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APJ PAK

APJ KRATZ

APJ JOHN SMITH

DECISION: REVERSED

Send Reference(s): Yes No
or Translation (s)

Panel Change: Yes No

Index Sheet-2901 Rejection(s): _____

Prepared: January 11, 2000

Draft Final

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OB/HD GAU

PALM / ACTS 2 / BOOK
DISK (FOIA) / REPORT